

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SHERYL MARLOW, )  
Plaintiff, )  
vs. ) Case No. 4:13CV2293 CDP  
MISSOURI DEPARTMENT OF )  
CORRECTIONS, et al., )  
Defendants. )

## **MEMORANDUM AND ORDER**

This matter is before me on plaintiff's motion to dismiss defendants Missouri Department of Corrections and Terry Russell without prejudice. The time for response to the motion has passed without opposition, and so the motion will be granted.

Defendants have also filed a motion to dismiss the official capacity claims against defendants Stanley Payne, Charles Lewis, and Ronald Carr, and all claims against the Missouri Department of Corrections and Russell. Although plaintiff has opposed that motion, plaintiff's opposition argues that she will be able to prove liability as to her *individual* capacity claims against those defendants.

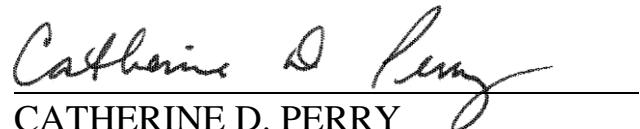
Plaintiff's complaint asserts both individual and official capacity claims under 28 U.S.C. Section 1983 against Payne, Lewis, and Carr, and only requests compensatory and punitive damages. Damages claims are not available against

individual defendants acting in their official capacities. *Murphy v. State of Ark.*, 127 F.3d 750, 754 (8th Cir. 1997) (citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989)). Dismissal of the official-capacity claims is therefore appropriate, but the remainder of the motion is moot.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to dismiss without prejudice her claims against the Missouri Department of Corrections and Terry Russell [# 19] is **GRANTED**.

**IT IS FURTHER ORDERED** that defendants' motion to dismiss [# 12] is **GRANTED** in part as to plaintiff's official capacity claims against defendants Payne, Lewis, and Carr. It is **DENIED** in all other respects.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 17<sup>th</sup> day of June, 2014.